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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

BRIAN GRIMBLE, Petitioner and Respondent, v. FETIA ROGERS, Appellant.	B289048 (Los Angeles County Super. Ct. No. 17STRO05074)

APPEAL from orders of the Superior Court of Los Angeles County, Bruce Iwasaki, Judge. Affirmed.

R. Chris Lim, Los Feliz Law for Appellant.

Randolph J. Brandelli for Petitioner and Respondent.

* * * * * *

The trial court ordered an ex-girlfriend to stay away from her ex-boyfriend and his son. The ex-girlfriend now appeals, arguing that the court erred in issuing the order in the first place and in denying her subsequent motion for reconsideration. We conclude there was no error and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

Brian Grimble (Grimble) and Fetia Rogers (Rogers) dated for two years.

Their break-up was precipitated by Grimble's infidelity and was, in a word, acrimonious. Grimble and Rogers exchanged hateful text messages, including one in which Grimble called Rogers a "bitch" and another in which Rogers called Grimble a "bitch ass nigger." When Rogers refused Grimble's request to return the Mercedes leased in his name but still in her possession, Grimble filed a stolen vehicle report with the police and the police repossessed the car. The next day, Rogers showed up at a birthday party for Grimble's six-year-old son. At some point thereafter, Rogers somehow gained access to the gated parking lot where Grimble parked one of his cars and scrawled "all over" it, in lipstick, "Bitch ass nigger," "Faggot," "Die slow" and "Fuck you."[1] Rogers then sought and obtained a protective order against Grimble that was later vacated due to improper service. The first weekend in December 2017, Rogers took Grimble's son to Las Vegas without Grimble's permission. A few

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1 It is unclear whether this was the Mercedes. Grimble indicated he had "two cars at all times," and neither party specified whether Rogers defaced the Mercedes or Grimble's other car.

weeks later, Rogers showed up at the school Christmas recital for Grimble's son.

II. Procedural Background

On December 14, 2017, Grimble sought and obtained a temporary restraining order (TRO) obligating Rogers, among other things, not to "harass" and to stay away from Grimble and his son. The next day, Grimble had a third party serve Rogers with the TRO, a Notice of Court Hearing for a January 4, 2018 hearing on a permanent injunctive order, and a blank responsive form (a DV-120 form).

The trial court held an evidentiary hearing on January 4, 2018. Grimble testified to the above stated facts. Rogers admitted to vandalizing Grimble's car, but said she only wrote "bitch" on one window. Rogers also testified that she had Grimble's ex-wife's permission to travel with Grimble's son to Las Vegas. Rogers offered a "notarized statement[]" from Grimble's ex-wife attesting to the ex-wife's consent to the trip, but the trial court excluded it as hearsay. Both parties were without counsel.

The trial court issued a protective order the same day. The court reasoned that Rogers had admitted to vandalizing Grimble's car and that such vandalism "is an act of abuse." Further, the court extended the protective order to Grimble's son because "taking . . . the minor child . . . out of state without [Grimble's] consent was inappropriate." More specifically, the court ordered Rogers for a period of two years, among other things, (1) not to "harass, attack, strike, threaten, assault, . . . stalk, molest, destroy personal property, disturb the peace, [or] keep under surveillance" Grimble and his son, and (2) to stay 100 yards away from Grimble and his son.

On January 16, 2018, Rogers through counsel filed a motion for reconsideration on the ground that (1) she was never served with a DV-120 or DV-120-INFO forms prior to the January 4, 2018 hearing, and (2) Grimble's ex-wife was now available to testify in person about granting Rogers permission to take Grimble's son to Las Vegas. Grimble opposed the motion, arguing that he was improperly served, that the motion was frivolous, and that he was entitled to $1,500 in attorney fees.

The trial court denied the motion for reconsideration after concluding, among other things, that (1) Grimble had not been properly served with the motion and (2) the motion was "frivolous" on its merits. The court issued an order to show cause why Rogers should not be sanctioned pursuant to Civil Procedure Code section 128.7, and set the hearing for April 6, 2018. In March 2018, Rogers filed a stipulation indicating that she had voluntarily agreed to pay Grimble $999.99 in attorney fees, and the trial court subsequently took the April 6 hearing off calendar.

Rogers filed a timely notice of appeal.

DISCUSSION

Rogers attacks the trial court's (1) grant of the January 4, 2018 protective order and (2) denial of her motion for reconsideration. We review both motions for an abuse of discretion (*In re Marriage of Davila and Mejia* (2018) 29 Cal.App.5th 220, 226; *Schep v. Capital One, N.A.* (2017) 12 Cal.App.5th 1331, 1339), and review any subsidiary factual findings for substantial evidence (*In re Marriage of Evilsizor & Sweeney* (2015) 237 Cal.App.4th 1416, 1424).

I. Protective Order

The Domestic Violence Protective Act (the Act) (Fam. Code, § 6200 et seq.)[2] authorizes a trial court "to restrain any person for the purpose" of "prevent[ing] acts of domestic violence" and "provid[ing] for a separation of the persons involved" if there is "reasonable proof of a past act or acts of abuse." (§§ 6300, subd. (a), 6220.) For these purposes and as is pertinent here, "abuse" includes "destroying personal property" and "disturbing the peace of the other party." (§§ 6203, subd. (a)(4) [borrowing definition from section 6320], 6320 [listing these sub-definitions].) A party "disturb[s] the peace" of the other party if she "destroys the mental or emotional calm of the other party." (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1497.)

The trial court did not abuse its discretion in issuing its protective order. Rogers's act of scrawling profanities and racial epithets in lipstick on Grimble's car qualifies as "abuse" because it certainly "destroy[ed] [his] mental or emotional calm." What is more, these acts were proven by a combination of Rogers's own admissions and Grimble's testimony. Either by itself is substantial evidence. (§ 6300, subd. (a) ["The court may issue an order under this part based solely on the . . . testimony of the person requesting the restraining order."].) The court also did not abuse its discretion in extending the order to Grimble's son because Grimble testified the out-of-state trip was without his consent.

Rogers raises what boil down to three arguments in response.

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2 All further statutory references are to the Family Code unless otherwise indicated.

First, she argues that her defacement of Grimble's car does not constitute vandalism as set forth in Penal Code section 594 because (1) lipstick does not cause *permanent* damage and (2) Rogers's financial contribution toward the car's lease means she has a "resulting trust interest" that precludes her liability for vandalism. This argument is irrelevant. Although a party's commission of criminal vandalism may be *sufficient* to qualify as "abuse" under the Act (e.g., *People v. Kovacich* (2011) 201 Cal.App.4th 863, 895), criminal conduct is not *necessary* to so qualify. By its plain language, section 6320 enumerates several acts constituting "abuse" under the Act, and only some of those acts borrow definitions from the Penal Code (§ 6320, subd. (a)); we must give effect to our Legislature's decision not to define the other acts of "abuse" by reference to the Penal Code. (*Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140, 1146-1147 [phrase "disturbing the peace" in section 6320 does not incorporate Penal Code section 415's definition of "disturbing the peace"]; see generally *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1117 ["Where different words or phrases are used in the same connection in different parts of a statute, it is presumed the Legislature intended a different meaning."].) Because Rogers's act of defacing Grimble's car with hateful speech is enough to "disturb [his] peace," it does not matter whether her conduct *also* constitutes criminal vandalism. Nor does Rogers offer any authority for the further proposition that a victimized party's "mental or emotional calm" is not "destroyed" simply because the offending party's acts are directed at property in which the offender has a nascent property or trust interest.

Second, Rogers contends that the trial court abused its discretion in excluding her notarized affidavit from Grimble's ex-

wife. Because "declarations constitute hearsay and are inadmissible" unless they fall into a hearsay exception (*Elkins v. Superior Court* (2007) 41 Cal.4th 1337, 1354, superseded on other grounds, § 217), the court did not err in excluding the ex-wife's declaration. Rogers asserts that the court's initial exclusion left some wiggle room when it told Rogers, "Maybe you'll have rebuttal evidence," but Rogers never renewed her request to admit the declaration and her failure to do so precludes her from challenging the further ruling she never requested or obtained. (*People v. Holloway* (2004) 33 Cal.4th 96, 133.)

Third, Rogers asserts that the trial court was biased against her. More specifically, she alleges that the court "subtl[y]" employed a "double standard" grounded in "gender-based stereotypes" when it (1) "mock[ed]" her in a "'fatherly/patronizing tone'" by telling her that her life was "'fascinating and interesting'" and (2) excluded her proffered hearsay evidence. Rogers's assertion is unsupported by the record or the law. It is unsupported by the record because the court, in trying to get the parties to focus on "the subject of this case," told *both* Rogers *and Grimble* that it was "confident that you are both fascinating, interesting people," because the court also excluded Grimble's proffered hearsay evidence, and because the court took pains to "hear [from] both sides" during the hearing. It is unsupported by the law because disqualifying bias must emanate from outside the proceedings or from a financial interest in the case's outcome. (*People v. Harris* (2005) 37 Cal.4th 310, 346-347, distinguished on other grounds in *People v. Montes* (2014) 58 Cal.4th 809; *People v. Williams* (2007) 156 Cal.App.4th 949, 956-957.) What is more, judicial conduct becomes impermissible bias only when it is "'"so prejudicial that it denie[s] [a party] a fair, as

opposed to a perfect"" hearing (*Arave v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (2018) 19 Cal.App.5th 525, 536-537); "expressions of impatience, dissatisfaction, annoyance and even anger" are not enough (*Liteky v. United States* (1994) 510 U.S. 540, 555). The judge's attempt in this case to keep the two unrepresented litigants focused on the pertinent legal issues comes nowhere near the line of impermissible bias.

II. Motion for Reconsideration

A court may reconsider a prior order if, within 10 days of that order, (1) a party raises "new or different facts, circumstances, or law" and (2) the party "'give[s] a satisfactory reason why it was unable to present its "new" evidence at the original hearing.'" (*McPherson v. City of Manhattan Beach* (2000) 78 Cal.App.4th 1252, 1265; Code Civ. Proc., § 1008, subd. (a).)

The trial court did not abuse its discretion in denying Rogers's motion for reconsideration. That motion purported to raise two new facts—namely, (1) Grimble's failure to serve Rogers with DV-120 and DV-120-INFO forms, and (2) Grimble's ex-wife's willingness to testify in person about giving Rogers consent to take Grimble's son to Las Vegas. However, neither of these facts was new and both could have been addressed at the original hearing. Rogers's attack on Grimble's service of process is triply flawed: The proof of service form shows that she *was* served with a DV-120 form and Rogers provides no authority indicating that a DV-120-INFO form must *also* be served; the alleged defect in service existed at the time of the original hearing; and Rogers's decision to appear and contest the merits of Grimble's request for a protective order waived any defects in the service of process (*Desmond v. Superior Court of San Francisco* (1881) 59 Cal. 274, 275; *Altafulla v. Ervin* (2015) 238 Cal.App.4th

571, 577-578). Rogers posits that she did not subjectively appreciate the significance of Grimble's allegedly defective service until she hired a lawyer, but her failure to appreciate any defect due to her lack of legal training is beside the point because pro se litigants are held to same "rules of procedures" as represented litigants. (*Nwuso v. Uba* (2004) 122 Cal.App.4th 1229, 1247.) Rogers's proffer of the ex-wife's testimony is also not new. Rogers knew that the ex-wife had potentially relevant testimony prior to the original hearing and, indeed, got a notarized statement from the ex-wife but did not secure her attendance at that hearing.

Rogers raises two further arguments.[3] First, she asserts that she properly served Grimble with the motion for reconsideration. However, the trial court did not base its final ruling on this ground, so Rogers's attack on this ground is beside the point. Second, Rogers contends that the court erred in imposing sanctions under Code of Civil Procedure section 128.7 without first giving her the 21-day safe harbor required by that statute. (Code Civ. Proc., §§ 1008, subd. (d), 128.7, subd. (c)(1); *Moofly Productions, LLC v. Favila* (2018) 24 Cal.App.5th 993, 995-996 [applying safe harbor to fees imposed under Code of Civil Procedure section 1008].) This contention lacks merit because *the court* never imposed sanctions; instead, Rogers voluntarily stipulated to pay some of Grimble's attorney fees. Her act renders the statute irrelevant and renders any challenge to those

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3 Rogers also attacks the trial court's ruling in its minute order that her filing of the motion for reconsideration was untimely, but we need not reach the additional ground for denial because the denial is valid for the reasons as discussed above.

sanctions moot. (*Hensley v. San Diego Gas & Electric Co.* (2017) 7 Cal.App.5th 1337, 1344-1345.) Rogers urges us to look past the mootness because this case involves "'an issue of broad public interest that is likely to recur'" (*Johnson v. Hamilton* (1975) 15 Cal.3d 461, 465), but there is no such issue in this case.[4]

DISPOSITION

The orders are affirmed. Grimble is entitled to his costs on appeal.

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_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ

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4 At oral argument, Grimble requested attorney fees on the ground that Rogers's appeal is frivolous. We decline to award fees on this basis.